

**Application No.:** 10/762,931  
**Filing Date:** January 21, 2004

### REMARKS

Claims 1-19 and 29-38 are currently pending and presented for examination. Claims 20-28 have been canceled. Applicants reserve the right to pursue the subject matter of any or all of the canceled claims in one or more continuing applications.

After having carefully considered the Office Action, Applicants respectfully traverse the rejection of claims 1-19 and 29-38.

#### Rejection of claims 1-19 and 29-33 under 35 U.S.C. § 103(a)

The Examiner rejects claims 1-4, 6-8 and 29-33 as allegedly obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 6,083,763 (Balch) in view of U.S. Patent Application Publication No. 2003/0035109 (Hartwich et al.). In particular, the Examiner asserts that Balch discloses all of the elements of the above-rejected claims other than "a dispenser that is configured to discontinue dispensing of reagents to wells where a reaction is not taking place." The Examiner, however, asserts that in view of the disclosure of Hartwich et al., a skilled artisan would have configured the dispenser allegedly disclosed by Balch as specified in the above-rejected claims in order to save time and cost. In addition to the foregoing rejection, the Examiner rejects claim 5 as allegedly obvious over the combination of Balch and Hartwich et al. in view of U.S. Patent No. 6,448,064 (Vo Dinh et al.). The Examiner also rejects claims 9, 10, 13-16, 18, 19 and 34-38 as allegedly obvious over the combination of Balch and Hartwich et al. in view of U.S. Patent No. 6,485,913 (Becker et al.) and claim 11 as allegedly obvious over the combination of Balch, Hartwich et al. and Becker et al. in view of U.S. Patent Application Publication No. 2003/0207441 (Eyster et al.). Additionally, the Examiner rejects claim 12 as allegedly obvious over the combination of Balch and Hartwich et al. in view of U.S. Patent No. 6,639,603 (Dower et al.), and finally, the Examiner rejects claim 17 as allegedly obvious over the combination of Balch, Hartwich et al. and Becker et al. in view of Vo Dinh et al.

Applicants maintain that none of claims 1-19 and 29-33 are obvious over any combination of the above-cited references. First, Applicants would like to point out that each of the Examiner's obviousness rejections relies on a combination of Balch and Hartwich et al. either alone or in combination with another reference. Next, Applicants would like to point out that the instant application properly claims priority to a provisional application that was filed January 21,

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2003, which is prior to the publication date of U.S. Patent Application Publication No. 2003/0035109 (Hartwich et al.). Finally, Applicants must point out that, as set forth in section 2136.03 of the MPEP, Hartwich et al. can only be applied as prior art as of its US publication date. More specifically, according to the MPEP, any U.S. Patent or Patent Application Publication having a filing date after November 29, 2000, and which is a U.S. national phase of an international application, must meet the following requirements in order for it to be applied as prior art as of the filing date of the international application: (1) the international application must designate the U.S. and (2) the international application must have been published in English (see MPEP § 2136.03(II)(B)). Applicants would like to point out that U.S. Patent Application Publication No. 2003/0035109 is a U.S. national phase of PCT/DE01/00571, which was published as PCT Publication No. WO01/69210 in German. As such, Hartwich et al. can only be applied as art as of its U.S. publication date (see MPEP § 2136.03(II)(B)). Since the publication date of U.S. Patent Application Publication No. 2003/0035109 (Hartwich et al.) is subsequent to the priority date of the instant application, Hartwich et al. is not prior art to this application. Because each of the above rejections rely on Hartwich et al. to supply at least one element of each of the above-rejected claims and because Hartwich et al. is not prior art to the instant application, Applicants submit that none of the above combinations of cited references disclose all of the elements recited in any of the above-rejected claims.

In view of the foregoing remarks, Applicants submit that none of claims 1-19 and 29-33 are obvious. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-19 and 29-33 under 35 U.S.C. § 103(a).

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution.

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Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

### **CONCLUSION**


Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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